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ABSTRACT

In a speech to the House of Representatives, the president of the Association of American Law Schools describes the intrusions upon faculty governance of law schools by deans, university administrators, lawyer alumni, law students, and the judiciary. It is suggested that law schools have never been better, yet legal education has never been under greater attack or intrusion from elements within and outside the profession, complicated by new litigation in real estate development, business planning, governmental regulation, minority rights, and consumer and environmental law. Given such pressures, legal educators should regain primary responsibility for determining institutional policy towards legal education courses offered to their students. Educational programs in legal writing, drafting and training in particular fields should be emphasized, and three-year law programs should be encouraged and continued. Several suggestions are made, including: teachers must become exemplars, not "pals"; legal curricula must become more cohesive; legal clerkships should be encouraged and made more available; boards of visitors should include nonlawyers who hold important community positions; law school publications should be supervised by faculty members; continuing legal education programs should be sponsored; law schools should encourage special legal education programs for nonlawyers; state law schools must lobby effectively for representation in state government; and deans of public and private law schools should set up an affirmative program to discuss legal issues with state supreme courts and state organized bar associations. (DC)

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President's Address

ASSOCIATION OF AMERICAN LAW SCHOOLS • ONE DUPONT CIRCLE • WASHINGTON, D.C. 20036 JAN. 1980

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LEGAL EDUCATION IN THE AGE OF ACCOUNTABILITY

by

Jerre S. Williams, President
Association of American Law Schools

5:00 p.m. January 3, 1980

Mr. President, Members of the House of Representatives of the Association of American Law Schools, and Friends:

I.

There must first be two personal accolades. This annual meeting comes at the conclusion of the exceedingly productive term of office of Professor, Dean, Chancellor, and President Cribbet. I wish to add my personal tribute and appreciation. No matter which hat he is wearing and which pipe he is smoking, or even what is in the pipe he is smoking, he is a man of extraordinary competence and leadership qualities. It has been a high privilege to work with him. Let us have an outstanding annual meeting in tribute to him as he leaves our profession, narrowly defined, to become the Chancellor of the University of Illinois.

It is so very meaningful to me in a personal sense that this is the last annual meeting at which our Executive Director, Professor Millard H. Ruud, will be serving in that capacity. This is good news and bad news. The good news is that we shall be welcoming back a close friend and colleague of many years to the faculty upon which I serve. It will be great to have law teacher Millard Ruud back with us at Texas this fall. Of course, the bad news for me is that he will be abandoning his office, and abandoning me as President of the Association in the middle of my term.

I agree with the philosophy that no person is indispensable. But Millard Ruud comes very close, indeed. He has become "Mr. Legal Education" throughout our country. His work for all of the member law schools deserves our highest honor and respect and our deepest appreciation.

II.

Article 6, Section 6, of the Bylaws of the Association of American Law Schools starts with a simple and important statement as Subsection a: "A member school shall vest in the faculty primary responsibility for determining institutional policy." As you are well aware, recent developments raise considerable doubt about the accuracy of that fundamental tenet; and its validity is being brought into question.

To begin an enumeration, in chronolgical order, the earlier sources of inroads upon faculty autonomy and leadership in law school guidance have come from deans and university administrators, and from lawyer alumni. These two groups have played significant roles in the law schools for many years. The role of the administrators has been participation in the establishment of policy. In the case of alumni, it has been the evaluation of policy.

But later, continuing the chronology, we have seen law student inroads upon faculty governance, and then most recently, sparked by the words of the Chief Justice of the United States, intrusion by the judiciary. The judges have begun to urdertake to tell us what law school education ought to be, and how we should go about it.

Those who know me personally know that at least from the point of view of my own circumstances, I am certainly qualified to evaluate the intrusions upon faculty governance of law schools by these groups.

As to the influence of deans and administrators, I am not now, nor have I been, nor shall I be, a dean. But one cannot have been a law teacher for my years and served on the Executive Committee of the AALS without having had a full gamut of experience in dealing with the relationship between law school faculties on the one hand, and deans and administrators on the other.

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As to being open and receptive to alumni, I have both a son and a daughter now practicing law who are graduates of the law school at which I teach. As to receptivity toward student complaints, not only did I have the son and daughter who are now practicing law, but my other daughter is now a senior at Texas.

Finally, I am not immune from the influence of the judiciary. My wife, Mary Pearl, is a judge. So I am in a position to be beset by these extraneous influences, and, on occasion, I have been.

I think it is well to be reminded specifically of some of the most recent developments which have constituted a mounting attack upon the adequacy of legal education.

The Clare Committee reported to the U.S. Court of Appeals for the Second Circuit in 1975. It recommended that any lawyer admitted to practice in the Second Circuit be required to have passed courses in Evidence, Civil Procedure, Criminal Law and Procedure, Professional Responsibility, and Trial Advocacy. It also recommended trial experiences.

The Committee of the Judicial Conference, chaired by Judge Devitt, reported tentatively for comment about a year ago. It does not recommend certain courses be required. But it does recommend additional trial courses in law school. And it recommends requiring testimonial experiences.

Rule 13 of the Indiana Supreme Court's Rules of Admission and Discipline, adopted a few years ago, in its current form sets 50 semester hours of specific course requirements in 13 subjects. The subjects are: Administrative Law, Business Organizations, Civil Procedure, Contracts, Consititutional Law, Criminal Law and Procedure, Equity, Evidence, Legal Ethics, Legal Research and Writing, Property, Taxation, and Torts.

The South Carolina Supreme Court's Rules for Admission to the Bar first proposed a requirement of 61 hours of credit in 15 designated subjects plus a requirement of 27 semester hours credit in five subjects in pre-law. As the result of public hearings in which the AALS played a significant part, the rule in its final form as promulgated last spring makes no specific credit hour requirements but does require successful completion of courses in Business Law, Civil Procedure, Commercial Law, Constitutional Law, Contracts, Criminal Law, Equity, Evidence, Legal Writing and Research, Professional Responsibility, Property, Taxation, Torts, and Trial Advocacy. Eleven trial experiences are required before an attorney can appear in court alone to represent a client.

Other state supreme courts now have specific course requirements under consideration.

Certainly, I need not emphasize to you the significance of these recent developments. The most current question that we must ask ourselves is: Is the primary responsibility for determining institutional policy now to become the responsibility of the judiciary? Or, even more broadly, also of the law school graduates who are now in the profession, or also of our students?

As to decanal influence, I am told by my friends the deans that it has been lessening in the more recent years, and I would rather expect that the increasingly short tenure of deans bears witness to this fact. Administration influence is always present, especially in financial nonsupport -- or support -- for the school. But, as a generalization, I think it is fair to say that current concerns as to influence and pressures upon law schools have not seen an increase from deans and university sources, although isolated instances always are occurring.

III.

I begin my evaluation of these current developments with two factual assertions which I believe are unassailable:

1. The law schools of the United States today are doing the finest job of legal education that they have ever done in all their history.

2. The law schools of the United States, at least since they have become the dominant means of legal education, have never been under greater attack or intrusion from other elements within the profession and outside the profession than the attack and intrusion under which they labor today.

This is a classic irony. Legal education has never been better, yet it has never been under greater attack.

I cannot give you a complete and authoritative answer as to why these two facts exist side by side. I think some elements of the sources of the attacks, however, can be isolated.

First, with particular reference to the judiciary. I am convinced that the level of competence of our recent graduates appearing before courts is higher than it has ever been before. I believe that the incompetence which is observed by some judges -- a small minority of judges as the polls show -- is not the major problem.

I think the real concern was most accurately and effectively stated by a federal court of appeals judge who was not speaking for attribution. He said the problem is not that the lawyers are less competent or effective than they used to be. The problem is that we judges need the guidance which comes from the competence and effectiveness in advocates before us far more than we needed it in the past. This is a statement of great insight. The law is ever more complicated; we are more and more a litigious society; questions which a few years ago we never thought of as raising significant legal issues are now routinely in court. The judges do need the best possible help from the advocates who appear before them. This is a matter to which we properly should turn our attention.

Our most direct consumers are our students. Much of their criticism is simply ancient criticism in modern guise, such as the assertions that we spend too much time theorizing, questioning, speculating, and evaluating, and not enough time teaching them how to make money as a lawyer. But the criticisms have been reinforced by the unrest of the last decade which stimulated the questioning of all institutions by those affected by them, and also the specific move toward giving consumers a voice in dealings with the supplier or producer.

It is nothing new for us to hear that the third year is a waste of time. But, I suspect a substantial factor in the current restlessness with the third year arises because so many law students now have held legally oriented summer clerkships or part-time jobs. This leads them to feel that any additional emphasis upon theory or even knowledge in the third year comes too late.

There is a laudable recent change in the availability of legally oriented jobs for law students. We ought to do all we can to expand and regularize the availability of these jobs. I spent the summer after my second year in law school as a part-time photography instructor and most-time garbage collector and general cleanup man at summer camp. Between my graduation and the bar exam result, I loaded cream cans at a truck dock and delivered to local creameries around the city. I do not look back on those jobs with sentimental nostalgia. I wish I had had legally oriented jobs. But the law-related jobs were virtually unknown for anyone until after they became lawyers.

The general attacks from alumni, while not new, now seem to have a foundation similar to the attacks by the judiciary. The law is getting more complicated and difficult. Are we adequately responding to the demands of a modern law practice in real estate development, business planning, governmental regulation of business as well as minority rights and consumer and environmental law?

It used to be said that we did not need to teach the mechanics of writing a contract, of filing a lawsuit, of trial tactics, because those matters would be taught as part of an apprenticeship in a law firm, or by the office neighbor friendly lawyer if one was a sole practitioner. But some law firms are now paying beginners $30,000 or more a year. They may feel they no longer can afford to give the time in nonchargeable hours to training. The regularization and specific accountability which has entered the establishment of fees in large and small law firms, as well as the pressures to accomplish enough work to give adequate service and justify an adequate fee, have greatly lessened earlier opportunities for apprenticeship or for guidance from a mentor.

This is a brief summary of the most recent types of pressures which make up part of today's heavy criticism of the law schools and legal education.

IV.

We are beset. What are we doing about it?

I urge you today that our response has largely been apologetic and defensive. A leak appears in the dike, and we run to try to plug it. Another leak appears at another point, and we try to plug it there.

This is not to criticize our response so far. The leaks have sprung, and we have rushed to plug them. And I suspect I shall be trying to plug further leaks this coming year.

But it is time we quit being defensive. It is time to become affirmative. It is time to stand and to justify what we are doing in legal education, and to make clear we are achieving the significant valid improvements as we go along.

Of course, this is a lot easier said than done. But I am totally convinced that our stature will be improved if we lead from strength rather than from apologetic weakness.

Let me remind you that Section 6 of Article 6 of the AALS Bylaws starts off: " A member school shall vest in the faculty primary responsibility for determining institutional policy." With this authority given to the faculty must go responsible action and responsible justification of that action.

V.

Before I begin to suggest some things that can be done, I should make my own position clear on the nature of quality legal education. In general, I follow the same belief expressed so eloquently to those of you who could brave the blizzard last year in Chicago by Judge Carl McGowan of the United States Courts of Appeals for the District of Columbia. Our primary, although not our sole, responsibility is to educate lawyers, not to teach the details of lawyering. As Judge McGowan said, it will not do you much good to know how and where to file a complaint if you do not have the basic understanding that can lead you to an effective theory for your case. There simply is no substitute for teaching the basic analytical processes essential to the high quality lawyer. I do not believe in tinkering with the basics of legal education just to be tinkering. I am reminded of Professor Bill Pedrick's penetrating observation: "A major cause of disease in rats is laboratory experimentation."

By believing this fully and firmly, I am not in any way debasing clinical legal education. Serving on the faculty of a school that had effective clinical legal education courses 35 and 50 years ago, I am not one to downgrade its importance. The debate as to whether we should have clinical legal education in law schools is over. We should have it. There are continuing debates as to its nature and content, as there should be. I do not wish to get into them except to stress the importance of quality and intellectual core in these endeavors. Further, we need emphasis on educational elements in writing, drafting, and training in particular fields of law practice, as recommended by the current Report of the Task Force of the American Bar Association Section of Legal Education and Admissions to the Bar, chaired by Dean Roger Cramton.

But we have an essential trade-off here which makes progress slower and result more doubtful than we might wish it could be. The trade-off is that in past years we were giving excellent legal education with very little in the way of personal supervision, small classes or individual clinical training. Legal education has been the most inexpensive quality education in all of academia. Yet, small classes, the individual attention, the clinical programs are very expensive.

On a strict cost analysis, one can argue that the returns from the greatly increased cost of legal education required by these highly expensive programs do not sufficiently justify them. The net result is that law schools are continually subject to criticism for not doing an adequate job across the entire spectrum of what could be the most effective legal education. And the answer is that the law schools cannot afford it. The final answer surely is that no one will be willing to pay the extra cost to pursue to the ultimate conclusion the drive for individualized instruction. We must work out an effective compromise.

As to our students, do we dare say to them, "You really do not fully know what is best for you?" If we cannot say that, legal education is no longer faculty-oriented. Dean Paul Carrington recently said that the major role of the law schools is teaching professionalism. And now I quote: "We now tolerate a passivity in the classroom which would have aroused a sense of shame only a few years ago." He went on to say that we need to teach students to speak under stress; and in our desire to please the students, we have allowed them to resent being prodded and challenged in the classroom. Continuing the Dean's views. Anxiety and pressure are pervasive in the professional life of a lawyer. So it may be that our softening in the classroom has given us teaching habits which are a disservice not only to the students but ultimately to their clients.

Dean Norman Redlich has said it is a mistake to try to become pals with the students. Our role is to be that of the exemplar of the professional attorney. I add that while this can be manifested in pressures and tensions in the classroom, it can also manifest itself in counselling, compassion, and understanding in proper context. Temperate pressure toward excellence is not demeaning, and temperate pressure toward excellence is not meanness. We are exemplars whether or not we want to be. What kind of exemplars are we?

I think we must be careful not to be sold a "bill of goods" on the so-called useless third year. To start with: the full so-called "three years" of legal education actually in time span consists of less than two calendar years with four weeks of vacation in each of those two years -- if we went to school on a year-round basis. It is not all that long. I am reminded that in the 1920's there was a move to make legal education four years, and some schools persisted in a four-year curriculum for some time.

I personally am one who believes very strongly that three years can be well used and is little enough for the kind of solid grounding in legal analysis, legal knowledge, and legal skills that we ought to be giving in law school.

Improve our teaching and improve our curriculum, improve the challenge to the student? -- Yes. And quit apologizing for what we are doing.

The matter of curriculum is the main focus of the criticism from the judges and the legal profession. I do not propose to give a curriculum committee report here today. In general, I believe our curricula are good, and we are adapting them to the needs of the profession as these needs develop.

But there is truth in the Cramton Task Force Report which recommends that there must be more cohesiveness and coordination in planning law school curricula than there has been in the recent past. The report recognizes that this is at a sacrifice to individual faculty member autonomy, but it recognizes that a curriculum which responds to the personal interests of each faculty member does not necessarily respond to the overall needs of the education of a lawyer. Your president-elect nominee, Dean Albert Sacks, puts together the need for a more coordinated curriculum and the third year problem by urging our curricula be a three-year progression, with the third year not just a second second year, but instead with different courses, techniques, and objectives.

The great issue today, of course, is who will prescribe the curriculum -- the judges, legislative bodies, or the law schools themselves through the faculty as the instrument of policy making working on a coordinated basis with the dean. There is no need to belabor this matter with this audience. The primary role in establishing institutional policies is for the faculty, not the court, not legislation, not the alumni.

But we have been fighting a losing battle on this. We are spending all of our time being defensive. By and large, those who would prescribe our curriculum from the outside, I am convinced, are persons of good will. But they do not fully know and understand what we are doing, and they are not skilled legal educators. Of course, they should be listened to and listened to carefully. But we can and we must justify our control.

I do not mean to belittle when I report the following episode. I report it because it demonstrates what we must learn to deal with. I heard an address by a justice of the supreme court of one of the states who within the space of five minutes made two assertions. First: law schools are too conservative, too hidebound and inflexible in their curricula. They do not adapt to modern needs. And second: law schools must require that all students take the traditional basic courses, and gave as one such example the course in equity. And there was no indication that the justice saw any measure of inconsistency between his two statements. I am convinced that the justice was feeling a genuine sense of frustration and concern. He had a belief that there is inadequacy in legal education, and he was trying to search for it.

VI.

Now comes the critical part of what I say today -- that part directed at how we go about not just reacting, but acting affirmatively to today's challenges in legal education. I trust you have not been awaiting this part with undue enthusiasm and optimism. I have no panacea which will clear away all of those matters which beset us. But there are a number of things we can do affirmatively which we, at least on a broad basis, have not yet done. Some of the things I mention will be familiar; some of them may raise doubts. But I advance them as part of an absolutely essential drive for us to shift from a defensive to an effective and affirmative posture in dealing with those who now are critical of legal education.

I have already made three suggestions:

First: Legal education should focus upon professionalism with teachers not being "pals," but exemplars.

Second: There should be more cohesiveness and coordination in curricula.

Third: We should try to enhance and regularize opportunity for legal clerkships toward a goal of opportunity for every law undergraduate to have such an experience in the public or private sector.

Now to the remainder of my suggestions.

My fourth is the most important and critical suggestion I make. Faculties must recognize that the law schools are created to serve the legal profession and ultimately the society in which we live. Part of the responsibility which goes with faculty-oriented legal education is faculty responsibility to reach out and create liaison and affirmative dealings with alumni, members of the profession generally, members of the judiciary, legislators, and the general public. Law faculty members cannot abdicate their obligation toward the profession and those who are in it. They must not simply sit back to criticize or ignore the profession and its members.

What does this have to do with teaching and scholarship? Our students are not just those in our classrooms -- the profession and the public are our students, too. And in our scholarship we must learn from the profession and the public. Labor law happens to be one of my fields. If we relied solely upon the written word in our research, our scholarship would be sterile nonsense. Most of the fields of the law are the same.

What I am emphasizing here is an institutional responsibility of faculty members. I do not urge necessarily that we go through a faculty and assign particular liaison and participation tasks to each faculty member. But we should try to insure that representative numbers attend and actively participate in bar meetings, bar activities, the swearing-in of new judges, and the like. Faculty members generally must realize that the faculty in its collective and institutional sense must accomplish these effective dealings with the profession, or faculty-oriented legal education is in serious jeopardy. As my fourth suggestion, I stress again, faculty responsibility to the law school as an institution which serves the profession and the public.

There are other specific ways that the relationship between the faculty and the profession can be developed. A fifth suggestion is the use of boards of visitors. Boards should probably include nonlawyers who hold positions of leadership and respect in the community. One of the most important aspects of a board of visitors is to have faculty members meet with them and be open to discussion of what the faculty members are doing and what improvements can be made.

A sixth suggestion is another means of reaching the profession -- law school publications. Of course, I am not referring to a "law review." I am referring to the newsletters, annual reports, magazines, pamphlets, and other publications of the law school designed for the specific purpose of trying to bring law school activities to the attention of the alumni, the profession, and the public. Do not scoff at their influence.

An unfortunate trap a law school can fall into is to allow students to publish the law school newspaper or magazine and then send it out to the alumni. I have seen this self-defeating process in operation. Quite a few law schools have put control of the law school publications in the hands of knowledgeable and concerned faculty members. This has proved gratifying and effective.

What I have been describing in these last three suggestions are outreach programs; various kinds are already in use by some law schools. But attention should be given them to sharpen them and make them more effective. The greatest single need is a sincere and broadly based outreach by the faculty.

There are other programs which are not specificially outreach programs, but can have similar effects and in very useful ways. As a seventh proposal, I emphasize continuing legal education. There is debate today about whether continuing legal education should be a responsibility of the bar to the exclusion of the law schools. I believe it would be a grave mistake for the law schools to get out of CLE.

There is no reason that the most outstanding continuing legal education cannot emanate from law schools and law faculties. An effective mix of practitioners and law teachers highly skilled and specialized in certain areas makes the finest CLE program available. And there is the additional advantage, relevant to what I am talking about today. Law school CLE programs educate the profession on the quality of the law schools and the faculty members. Finally, lawyers and teachers get to know one another. This is neither unimportant nor casual.

Eighth. Why not have the law school put on regular programs for nonlawyers without charge, programs about the law and legal institutions? The legal profession as a whole would gain from the increased public awareness and understanding. But the law school would gain distinct advantage in public support. Law faculties consist of savvy people. Let's show the public that we are, and educate them at the same time.

Where we have been most lacking in our communication with the profession has been in direct communication with the legislative bodies and with the courts. Ninth. As to the legislative bodies, it is almost universally the situation that state law schools can communicate with the legislative body only through the overall university hierarchy. And this has distinct disadvantages to the law schools. Ways should be explored to see if authorized channels cannot be more freely open on specific matters pending in legislative bodies which affect the law schools.

On a national basis, we face the issue of whether the Association of American Law Schools should have a regular lobbyist. My personal answer to this issue is firm. We must move to establish an AALS lobbyist with the Congress.

At this point, it is important to evaluate for a moment the relationship between the AALS and the American Bar Association and its Section of Legal Education and Admissions to the Bar. The ABA recognizes one of its major roles is lobbying on behalf of the legal profession. And through the Section of Legal Education, it not only has been effective in accreditation, it has been most helpful in support of the law school before legislative bodies. We thank the ABA for this.

The ABA labors under a specific and very important limitation, however, as far as the law schools are concerned. Section policy can become ABA policy only through submission to the House of Delegates of the ABA. And the House of Delegates is concerned with the entire practicing profession and the judiciary, as well as with legal education. It is not focussed on the problems of legal education as is our Association.

The only organization which is directed solely at representing the law schools of the United States is the AALS. We should emphasize this role to be as effective as possible in speaking for the law schools.

The AALS also becomes an effective indirect lobbyist with some of the state legislative bodies. They naturally look to our Association as the organization which can speak for the law schools. This public role of the AALS must be enchanced.

Tenth. In our relationships with the judiciary, I think the time has come to develop a representational device which in the past probably we would not have wanted to use. I propose that the deans of the public law schools of the various states, probably with the addition of the deans of representative private law schools at least in some instances, set up an affirmative program of the regular discussion of mutual problems with the state supreme court and the state organized bar.

A few years ago, such a proposal would automatically have been viewed with disfavor on the ground that it is better "not to stir up things." "What they don't know won't hurt them," we would say. But we are now finding out that what they don't know may hurt us.

Things have now been stirred up; the courts are inquiring and acting. Our role should be the affirmative one of regularly informing the courts of what we are doing in legal education, explaining to them why we are doing it, and dealing with whatever suggestions they may have.

Such a liaison organization of deans and faculties should set up regular meetings with the state supreme court and the organized bar to accomplish these objectives. We should quit worrying that the courts and the bar might think of something dreadful or dastardly if we give them the chance by talking to them about legal education. It is much better to have them think of what bothers them in the presence of legal educators who can dispel misconceptions, and can explain programs and curricula, than to have them puzzle about such matters without having adequate information about what is going on.

In short, we must now fully accept the role which the state courts and the organized bar play in legal education and we must deal with it accordingly without fear.

I do not believe suggestions or guideposts or whatever generally come in tens. I did not expect to come out with ten when I started my drafting. I would be delighted to have you destroy the "rule of ten." Your additional suggestions and contributions are solicited and welcomed.

VII.

I may have stepped on some toes here today. But I do not intend this as a belligerent speech. I want it to be an affirmative message to urge an additional role which the law schools must play. The role is educating others as to what law schools are doing and why we are doing it.

We must gain the power of an affirmative program. As my wise former dean, Page Keeton, says "Righteousness without power has little chance to prevail." We can be right, and by and large we are right, but we need to develop the power to support our righteousness. There must be the power to preserve the core of the governance of legal education by competent, dedicated, concerned, responsible legal educators if quality legal education is to survive and thrive.

Legal education enters its age of accountability -- specific accountability. I challenge you to make 1980 the year of the turn-around, the year when we quit defending, apologizing, and losing to those who criticize us. We must listen to and carefully heed the critics. But let this be the year we come forward, strong and effective, with new outreach programs, with a new role for legal education -- educating the courts, educating the profession, educating the public, and, yes, educating the students, as to what we are doing, and why we are doing it. Then, with openness of mind and spirit, molding our progress in legal education to the valid needs of the profession and the society we serve.

This is accountability.